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Felipe J. Farley
MOTOROLA, INC.
1700 Belle Meade Court
Lawrenceville, Georgia 30043

In re Application of
OGLESBEE, John W. *et al*
Application No.: 09/581,121
Filing Date: 03 April 2000
Attorney Docket No.: EN 10502 US
For: SUPPLEMENTAL BATTERY
OVERCHARGE PROTECTION DEVICE

DECISION

This decision is in response to applicants' "Petition for Corrected Filing Receipt" submitted 03 April 2000 which has been treated as a petition under 37 CFR 1.181.

BACKGROUND

On 28 September 1999, applicants purportedly filed a U.S. patent application. However, the papers were allegedly processed as a PCT application.

On 03 April 2000, applicants filed the instant petition which was accompanied by, *inter alia*, copies of papers filed 28 September 1999 and a copy of the date stamped postcard receipt for those papers.

DISCUSSION

In the petition filed 03 April 2000, applicants request a filing receipt for an application purportedly filed under 35 U.S.C. 111(a) on 28 September 1999. Petitioner alleges that he was informed that the submission was treated as an international application. However, no such international application has been found.

Nevertheless, MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. Applicants must enclose a self-addressed postcard identifying all of the papers filed. The USPTO will stamp the receipt date on the card and place it on the outgoing mail. The identifying data on the card must clearly identify the paper for which receipt is requested. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Here, applicants have provided a copy of the date-stamped postcard receipt for the documents submitted 28 September 1999. The postcard receipt records that: (1) a PCT application including 18 page application and 4 sheets of drawings; (2) oaths of

Oglesbee and Burns; (3) assignment of Oglesbee and Burns; and (4) a transmittal letter were received in the USPTO. The attorney document number "EN 10502 US" is listed on the filing receipt along with the title, inventors, and Express Mail No. "EL 351703315US." The filing receipt is stamped "OIPE SEP 28 1999."

Accordingly, applicants have provided *prima facie* evidence that the papers listed above were received by the USPTO on 28 September 1999. However, there appears to be a discrepancy between the indication of "18 pages" of the PCT application and the purported copy accompanying the present petition, which consists of 12 pages of description, 5 pages of claims, and 4 pages of a PCT Request. (Note that a "PCT application" as defined under PCT Article 3, consists of a Request, description, claims, drawings and abstract). A review of the papers submitted reveals that an abstract has not been included. Before petitioners' request to accord the present application a 28 September 1999 filing date can be granted, clarification of the above discrepancy is required.

Moreover, the Transmittal Letter indicates the filing of a "United States patent application [which] claims priority to International Application No. PCT/US99/01911." The submission is not clearly identified as a submission to enter the national stage. Accordingly, the submission will be considered as being made under 35 U.S.C. 111(a). See 37 CFR 1.494(f) and 1.495(g).

DECISION

Applicants petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The application will be retained in PCT Legal for **TWO (2) MONTHS** from the mail date of this decision awaiting receipt of a renewed petition sufficiently clarifying the postcard inconsistency noted above.

If no such petition is timely filed, the papers will be forwarded to OIPE and processed under 35 U.S.C. 111(a) with a filing date of 03 April 2000.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



Boris Milef
PCT Legal Examiner
PCT Legal Office



James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457